

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 11, 2005 at
10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 128, SB 35 SB 84, SB 149
SB 160, 12/29/2004
Executive Action: SB 30, SB 49, SJ 6

HEARING ON SB 128**Opening Statement by Sponsor:**

SEN. BRENT CROMLEY, SD 25, BILLINGS, opened the hearing on **SB 128**, Clarify payment of transcript fees. **SEN. CROMLEY** provided the Committee with a letter, attached as Exhibit 1, asking that the Senate Judiciary Committee dispose of SB 128 without a hearing.

EXHIBIT(jus07a01)

EXECUTIVE ACTION ON SB 128

Motion/Vote: **SEN. WHEAT** moved that SB 128 BE TABLED. Motion carried unanimously.

HEARING ON SB 35**Opening Statement by Sponsor:**

SEN. JOHN ESP, SD 31, BIG TIMBER, opened the hearing on **SB 35**, Representation for indigent parents in child abuse and neglect cases. **SEN. ESP** stated that SB 35 dealt with the specific issue of petitions which are filed alleging child abuse and neglect which could lead to termination of parental rights. He went on to say that the meat of the bill states if an individual were to be involved in a petition regarding child abuse or neglect, that individual would be entitled to legal counsel if they could not afford it. **SEN. ESP** informed the Committee that some counties already provide legal services to indigent individuals. This bill would expand on that policy and make it standard practice to provide legal services to all individuals who cannot afford it across the state. He then discussed the Fiscal Note and coordination with **SEN. MCGEE'S** bill.

Proponents' Testimony:

John Connor, Chief Criminal Counsel, Attorney General's Office, stated that his office stood in support of SB 35. He went on to say they felt this was a very good policy approach to a problem. He then stated that the ultimate goal of the child protection statutes is to make the family whole again, and, through treatment, get the children back with the parents. **Mr. Connor** informed the Committee that in their experience this happened more often than not if attorneys are involved in the picture from the beginning. He concluded that it was a good idea to have

individuals represented, who don't have counsel, in a very complicated, complex, difficult area of the law.

John Larson, State Trial Judge, Missoula, representing himself, gave his background and the names of the organizations he had been involved with in regard to the issue in question. He continued by saying that it was very important to have attorneys present for indigent parents in proceedings involving child abuse and neglect questions. **Judge Larson** expressed the importance of all participants being represented and the fact that it moved the case along to a final determination and cost less in the long run.

Andrew Huff, Attorney from Helena, representing the ACLU of Montana, stated that they support SB 35 and think that it is an excellent bill and a good idea. He then discussed how it would dovetail with **SEN. MCGEE'S** bill. He concluded by saying that they believe in the long run it will save money and help the system to function more efficiently.

Opponents' Testimony: None.

Informational Testimony:

Shirley Brown, Division Administrator, Child and Family Services, Department of Public Health and Human Services, provided information which had been presented to the Interim Committee. She went on to provide statistical information regarding the individual judicial districts appointed counsel and at what stage in the proceeding the counsel was appointed.

Questions from Committee Members and Responses:

SEN. CROMLEY asked **SEN. ESP** if there was going to be a Fiscal Note. **SEN. ESP** responded that one was being prepared.

SEN. MCGEE asked **SEN. ESP** about the logic behind striking Lines 3 and 4 on Page 9. **SEN. ESP** replied that the rationale was that they were appointed earlier in the process so they would have already been appointed.

Closing by Sponsor:

SEN. ESP related stories he had heard from individuals regarding lack of proper representation. He concluded by stating that they needed to do all they could to protect the rights of those individuals.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 16.8}

HEARING ON SB 84**Opening Statement by Sponsor:**

SEN. CAROLYN SQUIRES, SD 48, MISSOULA, opened the hearing on **SB 84**, Generally revise gambling laws. **SEN. SQUIRES** indicated that SB 84 was a general revision of six places in the gambling law by the Gambling Commission. **SEN. SQUIRES** discussed and explained the six areas in the law that would be affected by SB 84. She concluded by stating that it was not an expansion, it was all contained under what is currently in effect.

Proponents' Testimony:

Gene Huntington, Administrator, Gambling Control Division, spoke in support of SB 84. He discussed the concerns presented to the Gaming Advisor Counsel from people in the industry and general public. **Mr. Huntington** provided the Committee with written testimony, attached as Exhibit 2, and walked them through the bill and explained each subject.

EXHIBIT(jus07a02)

Rich Miller, Executive Director, Gaming Industry Association, stated that they had participated in the process and they support the bill in its entirety.

Ronda Carpenter-Wiggers, Montana Coin Machine Operators Association, stated they feel that the bill had been covered well and that they had spent the last two years working on the bill with the Department. **Ms. Carpenter-Wiggers** went on to say that they support the bill in its entirety.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. CROMLEY asked **Mr. Huntington** in reference to Page 11, Line 9, if he had any objection to the removal of the word permanently. **Mr. Huntington** replied that he did not think it would create a problem.

Closing by Sponsor:

SEN. SQUIRES said that SB 84 was a cleanup bill with no intentions with which to expand gambling. She concluded by encouraging passage of the bill.

HEARING ON SB 149**Opening Statement by Sponsor:**

SEN. JESSE LASLOVICH, SD 43, ANACONDA, opened the hearing on **SB 149**, State service contracts to be performed by citizen, legal alien, or visa holder. **SEN. LASLOVICH** stated that he was bringing the bill forward as the result of a request from a constituent. His constituent asked him what he could do to help prevent the outsourcing of jobs from Montana. He went on to say that he had contacted a friend from the Michigan Legislature who informed him about a bill that Michigan had tried to put through, and this bill was modeled after that bill. **SEN. LASLOVICH** explained that what the bill would do is prevent state agencies from entering into contracts for the purchase of services with persons, companies or agencies not citizens of the United States. He informed the Committee that the Department of Administration stood in opposition to this bill because of what they felt would be unintended consequences.

Proponents' Testimony:

Don Judge, Teamsters Local 190, stated that they understood there could be some concerns regarding this legislation, however, his organization stood in support of the bill. He went on to say that there was a critical issue regarding the outsourcing of jobs particularly when those jobs are becoming the more highly paid jobs. He then stated that Montana was a participant, and gave some examples of those jobs which were going offshore. **Mr. Judge** then discussed the problems involved with reciprocity between states. He continued saying that the problem needed to be addressed, possibly by not allowing the Governor to sign away the rights of Montanans by signing away setting its own preferences regarding international trade agreements. **Mr. Judge** concluded, saying that maybe they needed to require state agencies to fully document who the contractors are and who their subcontractors are.

Opponents' Testimony:

Marvin Eicholtz, Administrator, General Services Division, Department of Administration, stated that as the responsible

agency for the purchase of all supplies and services for State government they have concerns with the bill and its unintended consequences. He then discussed the companies they get services from that have international bases. He went on to give examples such as credit card companies, software support, banking, hotel services and others. **Mr. Eicholtz** then addressed technical concerns they had with the bill. He went on to say that his agency did not have any enforcement ability and would not be able to audit companies they contract with to ensure that they were U.S. citizens. **Mr. Eicholtz** informed the Committee that the savings clause needed to be changed so it would be clear that the bill would not affect existing contract renewals. He continued, saying that the bill needed an out clause if it were going to provide the State with options. **Mr. Eicholtz** concluded by saying that public procurement was about saving money and providing effective broad-based competition within the free enterprise system.

Carroll South, Executive Director, Montana Board of Investments, stated that he was not speaking against the elimination of outsourcing, but informing them that outsourcing was necessary under some circumstances. He then went on to explain about the money that they invest and how that investing is handled. **Mr. South** continued by informing the Committee that the bill in its present form would eliminate the Board of Investments investment capabilities. He concluded by giving examples and asking that the Board of Investments be exempted from the provisions.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. CROMLEY asked **SEN. LASLOVICH** if there would be a Fiscal Note. **SEN. LASLOVICH** responded that he was not aware of one.

SEN. CURTISS inquired of **SEN. LASLOVICH** if the bill in any way related to the arrangement the Department of Revenue has. **SEN. LASLOVICH** replied that he was unaware of any arrangement that the Department of Revenue had.

SEN. CURTISS responded that it was her understanding that the Department of Revenue had a contractual arrangement with an entity in Texas. **SEN. LASLOVICH** stated that under this bill that arrangement would be okay as it was an arrangement within the United States.

SEN. MCGEE asked **SEN. LASLOVICH** how he envisioned accomplishing the goal of his bill from a practical standpoint. **SEN. LASLOVICH** stated that the bill had been written since Christmas and had

been on the internet for viewing and is rather annoyed that the Department notified him two minutes before the hearing that they were going to oppose the bill. He went on to say that he wanted to make the bill work and was willing to work toward that end.

{Tape 1, Side A taped at 2.4}

CHAIRMAN WHEAT asked **Mr. Eicholtz** what he would think about, rather than a prohibition, requiring those agencies, that do contract with entities outside of the U.S., to provide full disclosure as to why they are contracting with a foreign entity rather than a state or U.S. entity. **Mr. Eicholtz** replied that they could contract with a company that appeared to be American, however, that company could be obtaining services from entities that were not Americans. **CHAIRMAN WHEAT** then asked how they were going to enforce this requirement. He further inquired if they would have to investigate every company they were dealing with to make sure that they were not having foreign entities perform the work. **Mr. Eicholtz** indicated that they were open to considering some ideas that could be made workable.

SEN. SHOCKLEY asked **Mr. Eicholtz** if the workers were within the United States, could it be assumed that they were either citizens or lawful residents. **Mr. Eicholtz** stated that he was not sure he could answer that question.

SEN. ELLINGSON inquired of **Mr. Eicholtz** if he could provide the Committee and Sponsor with a list of his technical concerns regarding the bill for evaluation. **Mr. Eicholtz** replied that he would be happy to provide the list.

SEN. MOSS asked **SEN. LASLOVICH** if there were examples from those states that were addressing the issue currently. **SEN. LASLOVICH** responded that there were at least 35 states trying to address the issue and were introducing legislation to their legislatures. He went on to say that Tennessee had already passed legislation similar to SB 149, other states have legislation pending, and some states had tabled the bills for the same reasons being discussed.

SEN. MOSS asked **SEN. LASLOVICH** if he could provide the Committee with more information prior to further consideration of the bill. **SEN. LASLOVICH** indicated that he would.

Closing by Sponsor:

SEN. LASLOVICH stated that he felt the bill was important for Montana to provide good jobs and good wages to its citizens rather than unemployment benefits and job training. He went on

to say that he felt that the taxpayers of Montana wanted taxpayers from the State of Montana working for them or at least other United States citizens rather than citizens from other countries.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 10.3}

SEN. CROMLEY assumed the Chair for the presentation of SB 160 by **CHAIRMAN WHEAT**.

HEARING ON SB 160

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, BOZEMAN, opened the hearing on **SB 160**, Repeal legislative authority to assign holdover Senators.

SEN. WHEAT stated that this was a simple bill. It would repeal one section of the Montana Code. **SEN. WHEAT** provided the Committee with a copy of that section of the Montana Code which would be repealed, attached hereto as Exhibit 3. He went on to explain how this section had been passed into law the previous session. **SEN. WHEAT** then discussed a lawsuit that had been filed by Senator Tester, Senator Hansen and himself in the First Judicial District Court, Lewis and Clark County, regarding this matter and the ruling on the legislation relied upon regarding holdover senators was unconstitutional. He went on to explain that the ruling by the District Court was upheld by the Supreme Court. **SEN. WHEAT** concluded that his bill would simply repeal Section 5-1-116.

[EXHIBIT\(jus07a03\)](#)

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. O'NEIL asked **SEN. WHEAT** if the opinion by the Montana Supreme Court was unanimous. **SEN. WHEAT** indicated that it was.

Closing by Sponsor:

SEN. WHEAT closed.

CHAIRMAN WHEAT resumed the chair.

{Tape: 1; Side: B; Approx. Time Counter: 10.3 - 16.7}

EXECUTIVE ACTION ON SB 30

Motion: **SEN. LASLOVICH** moved that SB 30 DO PASS.

Discussion:

SEN. MCGEE asked **SEN. LASLOVICH** why he had not signed the Fiscal Note. **SEN. LASLOVICH** replied that he did not realize that there would be an impact to the General Fund. He went on to say he did not realize there would be a requirement for an additional FTE and he did not like it, so he did not sign the Fiscal Note.

CHAIRMAN WHEAT asked **SEN. LASLOVICH** if he still supported the bill. **SEN. LASLOVICH** responded that he still supported the bill, that he thought it was a great concept, but he did have a problem with the need for another FTE.

The Committee was informed by a member of the Attorney General's Office that because of the processing time required to prepare and review the fingerprints they would need the additional FTE.

SEN. MCGEE stated that he felt the bill was a good idea, however, he was not sure that the Department would need more FTEs to do the job.

Motion/Vote: **SEN. SHOCKLEY** moved that SB 30 DO PASS. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 49

Motion: **SEN. MCGEE** moved that SB 49 DO PASS.

Motion: **SEN. MCGEE** moved that SB 49 BE AMENDED.

Discussion:

SEN. MCGEE provided a copy of his amendment, SB 004905. avl, to the Committee for their review which is attached as Exhibit 4. He then proceeded to explain the amendments and how they would impact the bill.

EXHIBIT(jus07a04)

SEN. PERRY asked **SEN. MCGEE** if by striking the word "public" would he be affecting confidential statements no matter where they were made and where the limitations for the statements.

SEN. MCGEE replied that he did not have a problem with the word being taken out. He proceeded to give an example on how the bill would allow the obtaining of information.

SEN. PERRY and **SEN. MCGEE** continued to discuss the matter regarding who would be able to obtain information.

Motion/Vote: **SEN. MCGEE** moved that **AMENDMENT NO. SB004905.AVL DO PASS. Motion carried unanimously.**

Motion: **SEN. MCGEE** moved that **SB 49 DO PASS AS AMENDED.**

Motion: **SEN. ELLINGSON** moved that **SB 49 BE AMENDED.**

Discussion:

SEN. ELLINGSON provided the Committee with a copy of his amendment, Amendment No. SB004901.avl, attached as Exhibit 5.

EXHIBIT(jus07a05)

SEN. CROMLEY asked **SEN. ELLINGSON** about the person to make the determination as to what would be detrimental to the child. **SEN. ELLINGSON** replied that the determination would be made by the caseworker involved or the Department, whichever was having to respond to the statements being made. He went on to say if there was a violation of the limitation the child involved would have a cause of action for that violation of the right of privacy. **SEN. ELLINGSON** explained to the Committee where this particular language came from.

SEN. MCGEE stated that he felt this was a positive amendment. He went on to explain the amount of information which would be released.

SEN. O'NEIL said that he felt the amendment would defeat the purpose of the bill and explained why he felt that way.

CHAIRMAN WHEAT stated that the purpose of the confidentiality section of the statute was designed to protect the best interest of the child. He went on to say that as he understood the amendment, it was protecting the best interest of the child. He continued by saying that if it were determined that some of the

information would be detrimental to the child it would not be released.

SEN. MCGEE pointed out the sections of the bill which qualifies the information and the laundry list of those entities to whom information can be provided. He concluded by saying that he felt that the language was already inferred in another section of the bill.

SEN. PEASE asked, with the amendments in place, were the parents considered as individuals interested in the child's welfare. He went on to ask if the parent was left out.

CHAIRMAN WHEAT responded, saying the bill was structured in such a way that if someone were to come to the Committee and make statements regarding the Department lying about the situation, the Committee Members would then have the ability to go to the Department seeking information and the Department then would have the ability to disclose fact-specific information to the Committee Member related to the allegations.

SEN. MCGEE pointed out that there had been concern about using the phrase, "a person responsible". He continued by reading the definition from Code.

SEN. ELLINGSON stated the purpose of the Amendment was to protect the child, not abuse the parent. He went on to say that he wanted the Department to have an out so that if the information would be harmful to a child they would not have to provide the requested case-specific information. **SEN. ELLINGSON** then proposed to amend his amendment by adding language as follows: after information, "other than the person who has made the statements".

SEN. ELLINGSON withdrew his motion to pass his amendment.

Substitute Motion: **SEN. ELLINGSON made a substitute motion that SB 49 BE AMENDED.**

CHAIRMAN WHEAT inquired of **SEN. O'NEIL** if the substitute amendment resolved his concerns. **SEN. O'NEIL** replied that it would help, however, he still had some concerns.

CHAIRMAN WHEAT and **SEN. O'NEIL** further discussed **SEN. O'NEIL'S** concerns.

SEN. MANGAN stated he thought it would be easier to drop the "other person" language and leave it "at the child". He went on to say that he would prefer to see **SEN. ELLINGSON'S** amendment

delete "or harmful to another person who is subject to the information."

SEN. ELLINGSON responded that he liked **SEN. MANGAN'S** suggestion and if the Committee thought it would be better with **SEN. MANGAN'S** suggestion, he would withdraw his substitution motion.

SEN. ELLINGSON withdrew his substitute amendment and revised the same.

Substitute Motion: **SEN. ELLINGSON made a substitute motion that SB 49 BE AMENDED.**

SEN. ELLINGSON moved that SB 49 be amended as it appeared in Amendment No. SB004901.av1 striking all of the language after the word "child".

Motion/Vote: **SEN. ELLINGSON moved that the SUBSTITUTE AMENDMENT DO PASS. Motion carried 11-1 with SEN. O'NEIL voting no by voice vote.**

Motion: **SEN. MCGEE moved that SB 49 DO PASS AS AMENDED.**

Discussion:

SEN. CROMLEY stated that he was going to vote against the bill. He went on to say that he was concerned about the waiver of confidentiality.

SEN. MCGEE responded that there was a minimum of 26 different instances in which the Department can release information regarding a case. He went on to say that this bill would allow the Legislature to investigate and gave an example why it was important for the Legislature to be able to obtain facts.

SEN. CROMLEY stated that if a person came to him with a complaint he would ask them to sign a release and then he would look at all sides of the incident. He went on to say he felt it was a person's duty to sign a release if he had such a complaint. He concluded by stating that he did not have any major objections to the bill.

SEN. PERRY talked about the release and the objective of the bill. He went on to say that he wanted to protect both the recipient of the statement, the Department, eliminate the possibility of misquoting or misinterpretation and further enable and assist the Department in providing "fact specific information". **SEN. PERRY** then discussed the possibility of inserting the word written and where that insertion would be

made. He concluded by saying that he felt they needed something in writing.

SEN. MANGAN commented that he would support the bill. He went on to say that he did not think that the first amendment was necessary. He concluded stating that a release was too much and urged the Committee to pass the bill.

{Tape: 1; Side: B; Approx. Time Counter: 16.7 - 29.8}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 0.4}

SEN. PERRY stated that if someone made a statement in a Committee Hearing that would take care of the Committee Members, however, if someone were to stop a Legislator in the hallway he felt there was a need for a written release.

SEN. MCGEE stated that he felt he needed more time to review the bill before taking a vote, therefore, he withdrew his motion to **DO PASS AS AMENDED**.

CHAIRMAN WHEAT accepted the withdrawal of the motion and stated that he did want to continue Executive Action on the bill the next day.

{Tape: 2; Side: A; Approx. Time Counter: 0.4 - 3.2}

EXECUTIVE ACTION ON SJ 6

Motion: **SEN. MCGEE** moved that **SJ 6 DO PASS**.

Motion: **SEN. MCGEE** moved that **SJ 6 BE AMENDED**.

SEN. MCGEE provided the Committee with Amendment No. SJ000601.avl, attached as Exhibit 6.

EXHIBIT(jus07a06)

CHAIRMAN WHEAT read an e-mail from Ann Gilke of the State Bar wherein she stated, she had read and supported the proposed amendments.

Discussion:

SEN. MCGEE explained what the amendments would do.

SEN. O'NEIL stated that he supported the amendments.

CHAIRMAN WHEAT expressed support for the amendments.

Motion/Vote: SEN. MCGEE moved that AMENDMENT NO. SJ000601.AVL DO PASS. Motion carried unanimously by voice vote.

Motion/Vote: SEN. MCGEE moved that SJ 6 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

CHAIRMAN WHEAT informed the Committee that they would be doing Executive Action on all bills they had already heard on January 12, 2005.

ADJOURNMENT

Adjournment: 11:12 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/MP

Additional Exhibits:

EXHIBIT ([jus07aad0.PDF](#))